



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

W. Tayloe Murphy, Jr.
Secretary of Natural Resources

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Robert G. Burnley
Director
Steven A. Dietrich
Regional Director

STATE AIR POLLUTION CONTROL BOARD ENFORCEMENT ACTION A SPECIAL ORDER BY CONSENT ISSUED TO Norfolk Southern Railway Company, Reg. No. 20468

SECTION A: Purpose

This is a Consent Special Order issued under the authority of Va. Code § 10.1-1307.D, 10.1-1309, and 10.1-1184, and § 10.1-1316.C, between the State Air Pollution Control Board and Norfolk Southern, for the purpose of resolving certain violations of State Air Pollution Control Laws and regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Va. Code" means the Code of Virginia (1950), as amended.
2. "Board" means the State Air Pollution Control Board, a permanent collegial body of the Commonwealth of Virginia as described in Code §§ 10.1-1301 and 10.1-1184
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality.
5. "Order" means this document, also known as a Consent Order.
6. "Norfolk Southern Railway Company" and "N/S" means the corporation certified to do business in Virginia and its affiliates, partners, subsidiaries, and parents.
7. "Facility" means the structures at 8½ and Cambell. known as the East End Shop located in Roanoke, Virginia.

8. "WCRO" means the West Central Regional Office of DEQ, located in Roanoke, Virginia.
9. "Permit" means the Title V permit, which became effective October 7, 2003 and expires October 7, 2008
10. "O&M" means operations and maintenance.

SECTION C: Findings of Fact and Conclusions of Law

1. Norfolk Southern was issued a Title V permit on October 7, 2003. The Title V permit became effective the same date. The permit requires semi-annual and annual compliance certification.
2. The Compliance Certification is a statement by the facility stating that the facility was in compliance "continuously" or whether compliance was "intermittent".
3. Norfolk Southern is required to submit the annual "Compliance Certification" report by March 1 each year. Norfolk Southern submitted the report and it was received at DEQ WCRO on March 1, 2004. The report was reviewed by staff and several compliant issues were discovered in the report. Most issues were regarding word phrasing, and the meaning of the condition, the way it was phrased or how the condition should be certified.. These issues were resolve during a meeting with Norfolk Southern on April 19, 2004, However,
4. Norfolk Southern is required to perform periodic monitoring. **Specifically, condition VIII.A.1 states, Visible Emissions: *Each emission unit with a visible emissions requirement in this permit shall be observed visually at least once each calendar week in which the emissions unit operates. The visual observations shall be conducted using 40 CFR 60 Appendix A Method 22 techniques (condensed water vapor/steam is not a visible emission) for at least a brief time to only identify the presence of visible emissions. Each emissions unit in the Method 22 technique observation having visible emissions shall be evaluated by conducting a 40 CFR 60 Appendix A Method 9 visible emissions evaluation (VEE) for at least six (6) minutes, unless corrective action is taken that achieves no visible emissions. 40 CFR 60 Appendix A Method 9 requires the observer to have a Method 9 certification that is current at the time of the VEE. If any of these six (6) minute VEE averages exceed the unit's opacity limitation, a VEE shall be conducted on these emissions for at least 3 six minute periods (at least 18 minutes). All visible emission observations, VEE results, and corrective actions taken shall be recorded.***
5. Norfolk Southern has not conducted the Method 22 readings as described in the condition listed above, nor have they maintained the records required, by the Title V permit..

6. Norfolk Southern was issued a Notice of Violation on April 22, 2004 for condition VIII.A.1 listed above in section C- 4.

SECTION D: Agreement and Order

Accordingly the State Air Pollution Control Board, by virtue of the authority granted it pursuant to Va. Code §§10.1-1309 and 10.1-1316, and after consideration of the factors set forth in Va. Code § 10.1-1186.2, orders Norfolk Southern, and Norfolk Southern agrees, to perform the actions described below of this Order. In addition, the Board orders Norfolk Southern, and Norfolk Southern voluntarily agrees to pay a civil charge of **\$2583.00** in settlement of the violations cited in this Order.

1. **\$2583.00** of this civil charge shall be paid within 30 days of the effective date of this Order. Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia", delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 10150
Richmond, Virginia 23240

The payment shall include Norfolk Southern's Federal ID number or Social Security Number if Norfolk Southern does not have a Federal ID number and shall state that it is being tendered in payment of the civil charges assessed under this Order.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of Norfolk Southern, for good cause shown by Norfolk Southern, or on its own motion after notice and opportunity to be heard.
2. This Order only addresses and resolves those violations specifically identified herein, including those matters addressed in the Notice of Violation issued to Norfolk Southern by DEQ on April 22, 2004. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility as may be authorized by law; or (3) taking subsequent action to enforce the Order. This Order shall not preclude appropriate

enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.

3. For purposes of this Order and subsequent actions with respect to this Order, Norfolk Southern admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. Norfolk Southern consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Norfolk Southern declares it has received fair and due process under the Administrative Process Act, Va. Code §§ 9-6.14:1 *et seq.*, and the Air Pollution Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.
6. Failure by Norfolk Southern to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Norfolk Southern shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. Norfolk Southern shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Norfolk Southern shall notify the DEQ Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and

- d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director within 24 hours of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

- 9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
- 10. This Order shall become effective upon execution by both the Director or his designee and Norfolk Southern. Notwithstanding the foregoing, Norfolk Southern agrees to be bound by any compliance date, which precedes the effective date of this Order.
- 11. This Order shall continue in effect until the Director or Board terminates the Order in his or its sole discretion upon 30 days written notice to Norfolk Southern. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Norfolk Southern from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.
- 12. By its signature below, Norfolk Southern voluntarily agrees to the issuance of this Order.

And it is so ORDERED this day of 9-10, 2004.

for Steven A. Dietrich
Robert G. Burnley, Director
Department of Environmental Quality

Norfolk Southern voluntarily agrees to the issuance of this Order.

By: C. Douglas Corbin
C. Douglas Corbin
Manager Locomotive Shop

Date: 9-9-04

Commonwealth of Virginia

City/County of ROANOKE

The foregoing document was signed and acknowledged before me this 9th day of
SEPTEMBER, 2004, by C. DOUGLAS CORBIN, who is
(C. Douglas Corbin)

Mgr. Locomotive Shop of Norfolk Southern, on behalf of the Corporation.
(Manager, Locomotive Shop)

Theresa A. Wargrave
Notary Public

My commission expires: 8/31/2005